

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8158 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

TEKCHAND @ LATHANIY MULCHAND KALVANI

Versus

DISTRICT MAGISTRATE - PANCHMAHAL

Appearance:

HL PATEL ADVOCATES for Petitioner
MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 22/06/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 3rd August, 1998, made by the District Magistrate, Panchmahals, under the powers conferred upon him under sub-section (1) of section 3 of the Gujarat

Prevention of Anti Social Activities Act, 1985
(hereinafter referred to as 'the Act')

Feeling aggrieved, the petitioner had made a representation to the State Government on 21st August, 1998, which was rejected on 26th August, 1998. The Advisory Board has also upheld the order of detention. Therefore, the petition.

The petitioner has been detained under the Act on account of his anti social activities of bootlegging, which has resulted into registration of 9 offences referred to in the grounds of detention. Upon perusal of the grounds of detention, it appears that the petitioner has been regularly indulging into bootlegging activities and offences have been registered against him for violation of Prohibition law. Except the one case registered as Prohibition Case No. 150/98 lodged on 26th July, 1998, all the other offences are pending trial before the concerned courts. The Prohibition Case No. 150/98 is still pending the investigation. Further information in respect of the anti social activities of the petitioner has been received from three witnesses, whose identity has been withheld. Relying on the above referred 9 offences registered against the petitioner and the statements made by the witnesses referred to hereinabove, the petitioner is held to be a 'dangerous person' and his activities are considered to be prejudicial to the maintenance of public order. The petitioner is, therefore, ordered to be detained under the Act.

Amongst several grounds, the learned advocate Mr. Patel, appearing for the petitioner, has submitted that the above referred Prohibition Case No. 150/98 registered against the petitioner is pending investigation. Undoubtedly, the investigation papers have been relied upon by the Detaining Authority. He has further submitted that the said offence was registered pursuant to a raid carried out by the police and at the time of raid, the police had prepared search and recovery panchnama. It is this panchnama which is the basis of FIR lodged against the petitioner and, therefore, it is a vital document. Under his representation dated 21st August, 1998, the petitioner had made a demand for a copy of the said panchnama so as to enable him to make more effective representation. However, the said request was denied on the ground that the Detaining Authority had not relied upon the said panchnama for forming the subjective

satisfaction in respect of the anti social activities carried on by the petitioner. Mr. Patel has submitted that whether the Detaining Authority has relied upon the said panchnama or not is hardly relevant. What is important is that the said panchnama was a vital document and the petitioner had a right to a copy of the said panchnama. In absence of the said panchnama, the petitioner can be said to have been deprived of his right to make an effective representation and in the circumstances, his continued detention is not warranted. In support of his contention, Mr. Patel has relied upon two unreported judgments of this court delivered in the matter of AMRUTBHAI PRABHATBHAI SARANIYA VS COMMISSIONER OF BARODA CITY & ANR. (Special Criminal Application No. 2071/93, decided on 31st August, 1994, (Coram : Mr. Justice B.S.Kapadia & N.J.Pandya), and in the matter of NARENDRASINH DHANSINH RATHOD VS COMMISSIONER OF POLICE AHMEDABAD CITY (Special Criminal Application No. 1164/93, decided on 20th January, 1994 (Coram : Mr. Justice B.S.Kapadia & R.D.Vyas). In both the above matters, the Division Bench of this court has taken a view that the search and recovery panchnama is a document on the basis of which the FIR is lodged, and the FIR having been relied upon by the Detaining Authority, the search and recovery panchnama becomes a vital document and the detenu is entitled to a copy of the same. In absence of the panchnama, the continued detention of the detenu is vitiated. In the present case also, the case in question is pending investigation and the FIR is lodged on the basis of the search and recovery panchnama drawn at the time of the raid. The petitioner should, therefore, be held to be entitled to a copy of the said panchnama irrespective of the fact that the Detaining Authority may not have relied upon the said document. It is not disputed that the petitioner did make a demand for a copy of the said panchnama and the said demand was not accepted.

In view of the above judgments referred to hereinabove, in absence of the panchnama in question, the petitioner should be held to have been deprived of his Constitutional and statutory right of making an effective representation against the preventive detention. The continued detention of the petitioner should, therefore, be held to be bad.

In above view of the matter, the petition is allowed. The impugned order dated 12th August, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released

forthwith.

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JOSHI*